

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

STATE OF MISSOURI, RESPONDENT,

v.

TOMMY ROLLINS, JR., APPELLANT.

DOCKET NUMBER WD69814

DATE: July 13, 2010

Appeal From:

JACKSON COUNTY CIRCUIT COURT

THE HONORABLE WILLIAM STEPHEN NIXON, JUDGE

Appellate Judges:

Division One: Lisa White Hardwick, P.J., James M. Smart, Jr., and Cynthia L. Martin, JJ

Attorneys:

S. Kate Webber, Kansas City, MO, **for appellant.**

Shaun J. Mackelprang and James B. Farnsworth, Jefferson City, MO, **for respondent.**

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS, WESTERN DISTRICT

STATE OF MISSOURI, RESPONDENT

v.

TOMMY ROLLINS, JR., APPELLANT

WD69814

Jackson County

Before Division One Judges: Lisa White Hardwick, P.J., James M. Smart, Jr., and Cynthia L. Martin, JJ

Tommy Rollins, Jr., was convicted in Jackson County Circuit Court of first-degree assault of a law enforcement officer, armed criminal action, first-degree assault, and unlawful possession of a weapon. On appeal, he seeks a new trial on the ground that the court improperly overruled his objections to the State's peremptory challenges in the jury selection. He also seeks a new trial on the ground that the court erred in refusing to give the instruction he requested as to abandonment or renunciation of criminal purpose.

AFFIRMED.

Divison One holds: Rollins asks for a new trial on the basis that the trial court erred in refusing an instruction to the jury that would have allowed the jury to find, as a defense to the first-degree assault involving Mr. Scott, that Rollins had, after arriving at Scott's neighborhood, abandoned his criminal purpose to assault Mr. Scott. The trial court did not err because under 564.011, the abandonment of his criminal purpose is not a defense, though it is pertinent to mitigation of punishment.

Rollins also seeks a new trial on the ground that the trial court clearly erred in overruling his challenge under *Batson v. Kentucky*, 476 U.S. 79 (1986), to the State's peremptory strike of venireperson number 33, an African-American male.

The first reason offered by the prosecution related to the venireperson's belief that he had been a victim of racial discrimination. Rollins argues that it is not race-neutral to exclude venirepersons simply because they have been the victims of racial discrimination. Rollins argues that the court was required to take into account the disparate impact of such a supposedly facially race-neutral reason when it means that members of a particular race or ethnicity are more likely to be affected than others. Disparate impact, however, while pertinent to the inquiry related to pretext, is not determinative of whether the explanation is race-neutral on its face.

Rollins also fails to demonstrate a reason to conclude that the prosecutor's explanation was a mere pretext for discrimination. Rollins argues that the record shows that this venireperson *could* set aside his past experiences with police discrimination, based on the venireperson's own statements. Such an observation, while important in the context of dealing with a challenge *for cause*, is not relevant in determining the propriety of a *peremptory* strike. A venireperson's statement that he or she can set aside a prior experience and be "fair and impartial" does not resolve the issues in a *Batson* context where the party seeking to strike the venireperson might have reason to think otherwise. The prosecutor may reasonably have believed that the venireperson's previous personal experience with discrimination would have made him unduly sympathetic to Rollins' defense.

The second reason given by the prosecution related to the fact that the venireperson's uncle had been unjustly convicted in a criminal trial prosecuted by the Jackson County Prosecutor's Office twenty-three years earlier. Rollins acknowledges that this was a facially race-neutral explanation for the strike. Rollins, however, contends that this was a pretextual reason, because the venireperson said that he could set that experience aside and be fair and impartial. The venireperson's statement that she or he can be fair and impartial does not resolve the matter in the context of the final step of a *Batson* challenge to a peremptory strike. The trial court, in evaluating the State's expression of uneasiness with the venireperson's declaration within the totality of the circumstances, did not clearly err in its ruling.

Because the court had no authority to give an instruction on abandonment of criminal purpose and because the court did not clearly err in its rulings as to the State's peremptory challenges, the judgment of convictions is affirmed.

Opinion by: James M. Smart, Jr., Judge

July 13, 2010

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